

APPEAL NO. 041546
FILED AUGUST 16, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 2, 2004. With respect to the issue before him, the hearing officer determined that the respondent's (claimant) compensable injury of _____, extends to and includes a herniated disc at L4-5. In its appeal, the appellant (carrier) argues that the hearing officer's extent-of-injury determination is against the great weight of the evidence. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed as modified.

The hearing officer did not err in determining that the claimant's compensable injury of _____, extends to and includes a herniated disc at L4-5. That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was persuaded that the claimant sustained her burden of proving that her compensable injury included a herniated disc at L4-5. The factors emphasized by the carrier in challenging that determination on appeal are the same factors it emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer in resolving the issues before him. Nothing in our review of the record reveals that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the extent-of-injury determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In Finding of Fact No. 5, the hearing officer states "The Claimant's injury to the L4-5 intervertebral level of her lumbar spine included a herniated disc compressing on a thecal sac and causing spinal canal stenosis, plus facet and ligament hypertrophy, leading to the development of a synovial cyst." In making this finding, the hearing officer has exceeded the scope of the issue. The only question before the hearing officer was whether the claimant's compensable injury extends to and includes a herniated disc at L4-5. Once the hearing officer resolved that question, there was nothing left for him to decide. Accordingly, we strike Finding of Fact No. 5 in that it goes beyond the scope of the issue.

As modified to strike Finding of Fact No. 5, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge